BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: 03/16/05 – MAR Division: County Attorney's Office

Bulk Item: Yes X No _____ Staff Contact: Bob Shillinger

AGENDA ITEM WORDING:
Approval to advertise a public hearing on a proposed Resolution setting the rate for attorney's fees sought by the County Attorney's Office under Section 2-365 of the Monroe County Code.

ITEM BACKGROUND:
Under Section 2-365 of the County Code, the Board must set the attorney's fee rate the County Attorney's office. That rate will be sought when it is appropriate to seek reimbursement for fees from litigation opponents. Florida law permits local governments to seek reimbursement for in house counsel's attorney's fees, when appropriate, at the market rate, even if that rate exceeds the actual salary and benefit costs for the particular staff attorney. The resolution proposes setting that rate at $200.00 per hour, which is towards the lower end of the range of attorney's fees charged in Monroe County.

PREVIOUS RELEVANT BOCC ACTION:

BOCC adopted the County Attorney's office ordinance, including Section 2-365. in December 2004.

CONTRACT/AGREEMENT CHANGES:
NA

STAFF RECOMMENDATIONS;
Approval to advertise.

TOTAL COST: None **BUDGETED:** Yes _____ No _____

COST TO COUNTY: None **SOURCE OF FUNDS:** _____

REVENUE PRODUCING: Yes _____ No _____ **AMOUNT Per Month** _____ **Year** _____

APPROVED BY: County Atty X OMB/Purchasing NA Risk Management NA

DIVISION DIRECTOR APPROVAL: _____ for
JOHN R. COLLINS, COUNTY ATTORNEY

DOCUMENTATION: Included X Not Required _____

DISPOSITION: _____ **AGENDA ITEM NO.:** _____

RESOLUTION NO. -2005

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA SETTING THE RATE FOR ATTORNEY'S FEES SOUGHT BY THE COUNTY ATTORNEY'S OFFICE UNDER SECTION 2-365 OF THE MONROE COUNTY CODE.

WHEREAS, the Office of the County Attorney is authorized by Section 2-365 of the Monroe County Code to seek attorneys fees in certain matters; and

WHEREAS, Section 2-365 of the Monroe County Code requires the Board to set by resolution the basic hourly rates for services rendered by the County Attorney's office; and

WHEREAS, controlling case law in Florida authorizes government entities such as the County to seek reimbursement for the services of staff attorneys at the reasonable prevailing rate in the community even if that amount exceeds the cost of the particular staff attorney's compensation package (salary plus benefits); *see, Computer Task Group, Inc. v. Palm Beach County,* 782 So.2d 942 Fla. 4th DCA 2001); *Leibowitz v. City of Miami Beach,* 683 So.2d 204 (Fla. 3d DCA 1996); and *City of Boca Raton v. Faith Baptist Church*, 423 So.2d 1021 (Fla. 4th DCA 1982); and

WHEREAS, attorneys in the County Attorney's office routinely litigate cases on behalf of the County which often result in the County being entitled to attorney's fees; and

WHEREAS, the Board finds that it has been presented with substantial, competent evidence that the rate of two hundred dollars ($200.00) per hour falls within the range of reasonable attorney's fees charged by attorneys practicing in Monroe County possessing similar skill, experience, reputation, and competence of those attorneys serving as County Attorney and Assistant County Attorney;

NOW THEREFORE; BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA, THAT

1. The hourly rate for attorney's fees sought by the Office of the County Attorney, in circumstances set forth in Section 2-365 of the Monroe County Code, shall be two hundred dollars ($200.00) per hour.

2. This rate may be adjusted by a subsequent vote of the Board after a public hearing.

PASSED AND ADOPTED by the Board of County Commissioners of Monroe County, Florida at a regular meeting held on the ___ day of _____, A.D., 2005.

Mayor Dixie Spehar	_____
Mayor Charles "Sonny" McCoy	_____
Commissioner Murray Nelson	_____
Commissioner George Neugent	_____
Commissioner David Rice	_____

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

BY:_____
Mayor Dixie Spehar

ATTEST: DANNY KOHLAGE, CLERK

_____
DEPUTY CLERK

LEXSEE

COMPUTER TASK GROUP, INC., a foreign corporation, Appellant, v. PALM BEACH COUNTY, a political subdivision of the State of Florida, Appellee.

CASE NO. 4D00-879

COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT

782 So. 2d 942; 2001 Fla. App. LEXIS 4320; 26 Fla. L. Weekly D 918

April 4, 2001, Opinion Filed

SUBSEQUENT HISTORY: [**1] Rehearing Denied May 1, 2001. Released for Publication May 1, 2001.

PRIOR HISTORY: Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; James T. Carlisle, Judge; L.T. Case No. CL 97-6654-AE.

DISPOSITION: Affirmed.

LexisNexis(R) Headnotes

Civil Procedure > Alternative Dispute Resolution > Validity of ADR Methods
[HN1] Arbitrators' awards may not be vacated on the ground that the arbitrator made an error of law. The arbitrator is the sole judge of the facts and the weight to be given to the evidence.

Civil Procedure > Alternative Dispute Resolution > Validity of ADR Methods
[HN2] An arbitrator exceeds his powers only by going beyond the authority granted by the parties or the operative documents. Under federal authority, the test for whether an arbitrator exceeds his authority is whether the arbitrator had the power, based on the parties' submissions or the arbitration agreement, to reach a certain issue, not whether the arbitrator correctly decided that issue.

Civil Procedure > Alternative Dispute Resolution > Validity of ADR Methods
[HN3] An arbitration award may be vacated on the non-statutory ground that it is arbitrary and capricious.

Civil Procedure > Alternative Dispute Resolution > Validity of ADR Methods
[HN4] An appellate court's scope of judicial review of an arbitrator's decision is limited to determining whether or not the interpretation of the contractual language is reasonably debatable.

COUNSEL: Karen H. Curtis, and Stephen B. Gillman of Gallwey Gillman Curtis Vento & Horn, P.A., Miami, for appellant.

Paul F. King, Assistant County Attorney, West Palm Beach, for appellee.

JUDGES: WARNER, C.J., GROSS and HAZOURI, JJ., concur.

OPINION: [*943]

PER CURIAM.

We affirm the final judgment confirming the arbitration award made in this case. In considering appellant's contentions, we are mindful of the "high degree of conclusiveness" which should be attached to the arbitrator's findings. *Schnurmacher Holding, Inc. v. Noriega, 542 So. 2d 1327, 1328-9 (Fla. 1989).* [HN1] Arbitrators' awards may not be vacated on the ground that the arbitrator made an error of law. *See id. at 1329; Cochran v. Broward County Police Benev. Ass'n, 693 So. 2d 134, 135 (Fla. 4th DCA 1997).* The arbitrator is the sole judge of the facts and the weight to be given to the evidence. *See City of West Palm Beach v. Palm Beach County Police Benev. Ass'n, 387 So. 2d 533, 534 (Fla. 4th DCA 1980).* **[**2]**

Appellant claims that the arbitrator exceeded his powers in awarding certain types of damages. [HN2] An arbitrator exceeds his powers only by going "beyond the authority granted by the parties or the operative documents. . . ." *Applewhite v. Sheen Fin. Res., Inc., 608 So. 2d 80, 83 (Fla. 4th DCA 1992).* Under federal authority, which would apply to the contract in this case, the test for whether an arbitrator exceeds his authority is whether the arbitrator had the power, based on the parties' submissions or the arbitration agreement, to reach a certain issue, not whether the arbitrator correctly decided that issue. *DiRussa v. Dean Witter Reynolds Inc., 121 F.3d 818, 824 (2d Cir. 1997); Cassedy v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 751 So. 2d 143, 146 (Fla. 1st DCA 2000).* In this case, the arbitrator had the authority to award damages under the contract. Even if he made an error of law in awarding some of the damages, a point we do not decide, we do not review his errors of law, if any. Moreover, we conclude that none of the awards were arbitrary and capricious. *See World Inv. Corp. v. Breen, 684 So. 2d 221, 222 (Fla. 4th DCA 1996)* **[**3]** (" [HN3] An arbitration award may be vacated on the non-statutory ground that it is arbitrary and capricious.").

While appellant contends that the award was procured by fraud, a valid ground to vacate the award, appellant has failed to prove the fraud. Although it points to testimony of county employees which it claims was misleading, the court reviewed these contentions at a lengthy hearing and denied them. We conclude that there was no abuse of discretion, nor was there any clear and convincing evidence of fraud.

Finally, with respect to the award of attorney's fees, we affirm based on ***City of Boca Raton v. Faith Baptist Church of Boca Raton, Inc., 423 So. 2d 1021 (Fla. 4th DCA 1982).*** We reject the contention that the arbitrator acted without any evidence that the fees were reasonable. The arbitrator had evidence of the amount of the fees and the method of calculation, and he is the sole judge of the evidence and weight to be given to it. *See Palm Beach County Police Benev. Ass'n, 387 So. 2d at 534.* As to the costs awarded, some of the objections made on appeal were not made to the arbitrator. With **[*944]** respect to the remaining objections, appellant simply **[**4]** disagrees with the arbitrator's interpretation of the contract. However, [HN4] 'the scope of [our] judicial review is limited to determining whether or not the interpretation of the contractual language is reasonably debatable.' *Id. at 535* (quoting *Kearny PBA Local No. 21 v. Town of Kearny, 81 N.J. 208, 405 A.2d 393, 399-400 (N.J. 1979)).* We find that the arbitrator's interpretation was reasonably debatable in determining what costs could be awarded.

Affirmed.

WARNER, C.J., GROSS and HAZOURI, JJ., concur.

LEXSEE 683 SO.2D 204

MATTHEW LEIBOWITZ and DEBRA LEIBOWITZ, Appellants, vs. THE CITY OF MIAMI BEACH, Appellee.

CASE NO. 96-508

COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

683 So. 2d 204; 1996 Fla. App. LEXIS 12471; 21 Fla. L. Weekly D 2521

November 27, 1996, Filed

SUBSEQUENT HISTORY: [**1] Released for Publication December 13, 1996. Review Denied March 26, 1997, Reported at: *1997 Fla. LEXIS 417.*

PRIOR HISTORY: An Appeal from the Circuit Court for Dade County, Arthur L. Rothenberg, Judge. LOWER TRIBUNAL NO. 95-3927.

DISPOSITION: Affirmed, in part; reversed, in part.

LexisNexis(R) Headnotes

Governments > Local Governments > Claims By & Against

[HN1] Damages for the wrongful obtaining of a temporary injunction against a city cannot exceed the bond amount where there has been no opportunity for a hearing. However, where the enjoined party has proceeded expeditiously to exhaust available remedies, the damages for wrongful injunction are not limited to the bond amount.

COUNSEL: Norman Malinski, for appellants.

Murray H. Dubbin, City Attorney and Jean Olin, Deputy City Attorney, for appellee.

JUDGES: Before NESBITT, JORGENSON and GODERICH, JJ.

OPINION:

[*205] PER CURIAM.

Matthew Leibowitz and Debra Leibowitz appeal, and The City of Miami Beach [City] cross-appeals, from an order awarding attorney's fees in favor of the City. We affirm as to the main appeal and reverse as to the cross-appeal.

The trial court entered an ex parte order granting the Leibowitzes' request for a temporary injunction and establishing bond in the amount of $ 100. Shortly thereafter, the City, who was represented by the City Attorney's office, moved to dissolve the temporary injunction and to modify the injunction bond. The trial court sua sponte dissolved the temporary injunction, but did not hear the motion to modify the bond.

The City moved for attorney's fees. The motion stated that it expended 30 hours in obtaining the dissolution of the temporary [**2] injunction and requested payment of attorney's fees at the rate of $ 150 per hour. At the evidentiary hearing, the City presented uncontroverted evidence that $ 150 is a reasonable hourly rate. Nonetheless, in calculating the award of attorney's fees, the trial court based the hourly rate on the Assistant City Attorney's salary. The trial court awarded the City 30 hours at $ 46.40 an hour for a total award of $ 1,392.

The Leibowitzes argue on appeal that [HN1] damages for the wrongful obtaining of a temporary injunction cannot exceed the bond amount. See *Parker Tampa Two, Inc. v. Somerset Dev. Corp., 544 So. 2d 1018 (Fla. 1989).* This is the general rule, however, "where there has been no opportunity for a hearing and where the enjoined party has proceeded expeditiously to exhaust available remedies, the damages for wrongful injunction are not limited to the bond amount." *SeaEscape, Ltd., Inc. v. Maximum Mktg. Exposure, Inc., 568 So. 2d 952, 956 (Fla. 3d DCA 1990).* Accordingly, under the circumstances, we find that the trial court was

entitled to award attorney's fees that exceeded the bond amount.

On cross-appeal, the City contends that the trial court erred in basing the hourly [**3] rate of the attorney's fee award on the Assistant City Attorney's salary. We agree.

In *City of Boca Raton v. Faith Baptist Church of Boca Raton, Inc., 423 So. 2d 1021, 1022 (Fla. 4th DCA 1982),* the court held that the "mere fact that the [City] was represented by its house counsel who was paid an annual salary does not militate against the allowance of reasonable attorney's fees as provided by law." Therefore, since the uncontroverted testimony showed that $ 150 is a reasonable hourly rate, we reverse and remand for a recalculation of the attorney's fee award at a rate of $ 150 per hour.

Affirmed, in part; reversed, in part.

LEXSEE 423 SO.2D 1021

CITY OF BOCA RATON, Appellant/Cross-Appellee, v. FAITH BAPTIST CHURCH OF BOCA RATON, INC., a Florida nonprofit corporation; Woodlands Christian Academy, an unincorporated educational institution; and The Reverend Jerry Peterson, Pastor, Faith Baptist Church, Appellees/Cross-Appellants.

No. 82-905.

District Court of Appeal of Florida, Fourth District.

423 So. 2d 1021; 1982 Fla. App. LEXIS 22207

December 29, 1982.

LexisNexis(R) Headnotes

Civil Procedure > Costs & Attorney Fees > Attorney Fees

[HN1] A city is entitled to be awarded a reasonable attorney's fee as provided in *Fla. Stat. ch. 57.105.* The mere fact that the city is represented by its house counsel who is paid an annual salary does not militate against the allowance of reasonable attorney's fees as provided by law.

COUNSEL: [1]**

M.A. Galbraith, Jr., City Atty., Boca Raton, for appellant/cross-appellee.

Jon Jay Ferdinand, Tamarac, for appellees/cross-appellants.

JUDGES:

Before DOWNEY, Judge. LETTS, C.J., and DELL, J., concur.

OPINIONBY:

DOWNEY

OPINION: [*1022]

DOWNEY, Judge.

After finally disposing of the underlying litigation, the City of Boca Raton sought the assessment of reasonable attorney's fees against appellee pursuant to Section 57.105, on the grounds that appellee's defense completely lacked any justiciable issue of law or fact. The trial court awarded the City an attorney's fee but not a reasonable fee as provided by statute. Both parties seek reversal of that order.

The evidence showed that the reasonable value of the services rendered in the trial court by the City Attorney was $100 per hour. However, since the City was represented in this case by the City Attorney, who is paid a salary, the trial court felt an award of reasonable attorney's fees to the City would result in a windfall. Therefore, the trial court awarded the City a fee based on an hourly rate, which was arrived at by taking into consideration the City Attorney's salary. The fee awarded was substantially less than a reasonable [**2] fee based on the expert testimony adduced.

While we cannot deny the trial court's position was was arguably, we reject it and hold that [HN1] the City was entitled to be awarded a reasonable attorney's fee as provided in the statute. The mere fact that the plaintiff was represented by its house counsel who was paid an annual salary does not militate against the allowance of reasonable attorney's fees as provided by law. That is the position taken by the Seventh Circuit in *Illinois v. Sangamo Constr. Company, 657 F.2d 855 (7th Cir.1981),* wherein the State of Illinois, in its proprietary capacity, brought suit under a federal anti-trust act that entitles a successful litigant to treble damages, costs, and reasonable attorney's fees. The trial court awarded the successful state a reasonable fee of $63,285. The defendants contended, among other things, that, since the state was represented by the state attorney general, an award of attorney's fees to the state should be limited to

the actual costs incurred by the state for the lawyers' salaries.A number of other federal cases are cited in *Sangamo* that support the allowance of a reasonable fee to a successful party when its counsel [**3] is salaried or when the services are rendered free of charge.

The court in *Whitten v. Progressive Cas. Inc. Co., 410 So.2d 501 (Fla.1982),* at 505, noted that the purpose of Section 57.105 is:

... to discourage baseless claims, stonewall defenses and sham appeals in civil litigation by placing a price tag through attorney's fees awards on losing parties who engage in these activities.Such frivolous litigation constitutes a reckless waste of judicial resources as well as the time and money of prevailing litigants.

We believe the allowance of a reasonable fee in these circumstances is consistent with that purpose. In addition, we do not believe this holding in any way impinges upon the rule that restricts the allowance of attorney's fees in contract cases to not more than the amount agreed upon between the parties, such as *Sarasota Pub. Co. v. E.C. Palmer & Co., Limited, 102 Fla. 303, 135 So. 521 (1931).* In that case the contracting parties (lawyer and client) had decided between themselves that the fee agreed upon was reasonable.

Another reason to reject the appellees' proposal to limit the fees in a case like this to the actual cost to the party-recipient is that [**4] it would entail an evidentiary investigation into all of the ramifications of the overhead of the City Attorney's office. As the court said in *Sangamo:*

[R]eliance on generally prevailing market rates for attorneys with comparable skill, experience, and reputation simplifies the already difficult task district courts face in awarding reasonable attorney's fees. Defendants' approach would require courts to investigate the overhead and incidental expenses incurred by a state in connection with the prosecution of an antitrust suit. Such an inquiry would be a cumbersome means for arriving at a tentative figure of reasonableness. It is far better to rely upon generally prevailing market rates, which take into consideration [*1023] factors such as overhead and support personnel. The initial use of an objective standard of reasonableness, i.e., generally prevailing market rates, is far preferable to extensive judicial scrutiny of private fee arrangements or of the internal economics of the Attorney General's office. *657 F.2d 855, at 861, 862.*

Accordingly, we reverse the order appealed from and remand the cause to the trial court with directions to reconsider the amount [**5] of attorney's fee due appellant in the light of the evidence and the factors to be considered in determining a reasonable attorney's fee. n1 A further hearing on the question of attorney's fees may be appropriate in the court's discretion.

n1 *See Pitkin v. Ryan, 409 So.2d 1221 (Fla. 4th DCA 1982). See also* Disciplinary Rule 2-106(B), Code of Professional Responsibility.

We have considered the appellees' cross-appeal and found it to be without merit.

REVERSED AND REMANDED with directions.

LETTS, C.J., and DELL, J., concur.